

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD).No.1592 of 2018
and C.M.P.No.8640 of 2018

P.Arunkumar

... Petitioner

Vs

A.Kamali

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order and Decreetal Order dated 06.07.2017 and made in I.A.No.5472 of 2017 in O.S.No.6063 of 2016 on the file of the XI Assistant City Civil Court at Chennai.

For Petitioner : Mr.P.Kamarasu

For Respondent : Mr.S.Thirumavalavan

ORDER

This Civil Revision Petition is filed to set aside the Order and Decretal Order dated 06.07.2017 made in I.A.No.5472 of 2017 in O.S.No.6063 of 2016 on the file of the XI Assistant City Civil Court at Chennai, thereby dismissing the petition to grant leave to defend the suit.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit. The respondent filed a suit for recovery of money. The respondent issued a pre suit notice dated 09.09.2016, thereby calling upon the petitioner to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) which was borrowed on 09.04.2016 for the purpose of household expenses. When the respondent demanded the said amount, the petitioner issued a cheque bearing No. 437227 dated 16.08.2016.

3. On receipt of the same, the petitioner replied by the reply notice dated 29.09.2016 and categorically denied all the allegations made in the pre suit notice dated 09.09.2016. Further specifically averred that the petitioner never borrowed any amount from the respondent. He intended to

purchase the two wheeler for which the respondent had voluntarily offered to arrange the financier to purchase the said vehicle on EMI basis, since, she had acquaintance with the persons who are working in financial sector. Therefore, the petitioner called upon the respondent to return the cheques which were obtained by the respondent while arranging the loan for purchase of two wheeler.

4. Again on 28.11.2016 the respondent issued another notice calling upon the petitioner to pay a sum of Rs.7,80,000/- (Rupees Seven Lakhs Eighty Thousand only) with interest at the rate of 24%. In the said notice, she has further stated that the petitioner borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 01.10.2014 for his brother's business purpose. Thereafter, he also borrowed another sum of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) in the month of December 2014.

5. When the respondent demanded the said amount, the petitioner issued a cheque bearing No. 437235 dated 16.08.2016. It is pertinent to note that for the amount which was allegedly borrowed by the petitioner on 09.04.2016, the respondent caused notice on 09.09.2016, whereas the

amount allegedly borrowed by the petitioner on 01.04.2014, the respondent caused notice only on 28.11.2016.

6. In fact, the petitioner sent a reply notice on 29.09.2016 thereby calling upon the respondent to return the cheques which were given by the petitioner. Further, the case of the respondent is that on the same date namely on 16.08.2016, the petitioner also issued another cheque bearing No. 437236 for the sum of Rs.8,00,000/- (Rupees Eight Lakhs only) for the amount borrowed by him. Further, it is also revealed that the respondent initiated the proceedings for the offence punishable under Section 138 of the Negotiable Instruments Act for the dishonor of both the cheques bearing Nos. 437235 and 437236 in C.C.Nos.1222 of 2017 and 535 of 2017 respectively on the file of the Fast Tract Court, Saidapet, Chennai.

7. Upon consideration of the above facts, this Court is of the view that the petitioner has got valid defence in the suit filed by the respondent. Without considering those aspects, the Court below dismissed the petition and as such it is liable to be set aside.

8. Accordingly, this Civil Revision Petition is allowed and the Order passed in I.A.No.5472 of 2017 in O.S.No.6063 of 2016 dated 06.07.2017 on the file of the XI Assistant City Civil Court at Chennai is set aside. The petitioner is directed to file his written statement within a period of **two weeks** from the date of receipt of copy of this order, failing which the trial Court is directed to dispose of the suit within a period of **six months** from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

17.04.2021

Internet:Yes
Index:Yes/No
rna

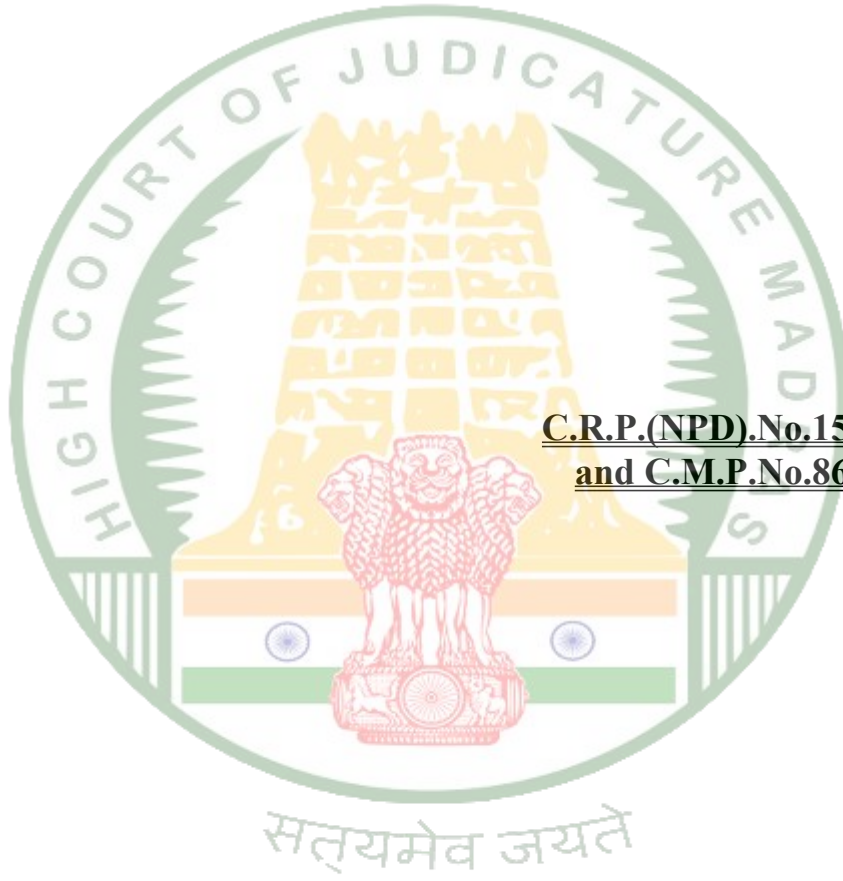
To

The XI Assistant City Civil Court,
Chennai.

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G.K.ILANTHIRAIYAN. J,

rna



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